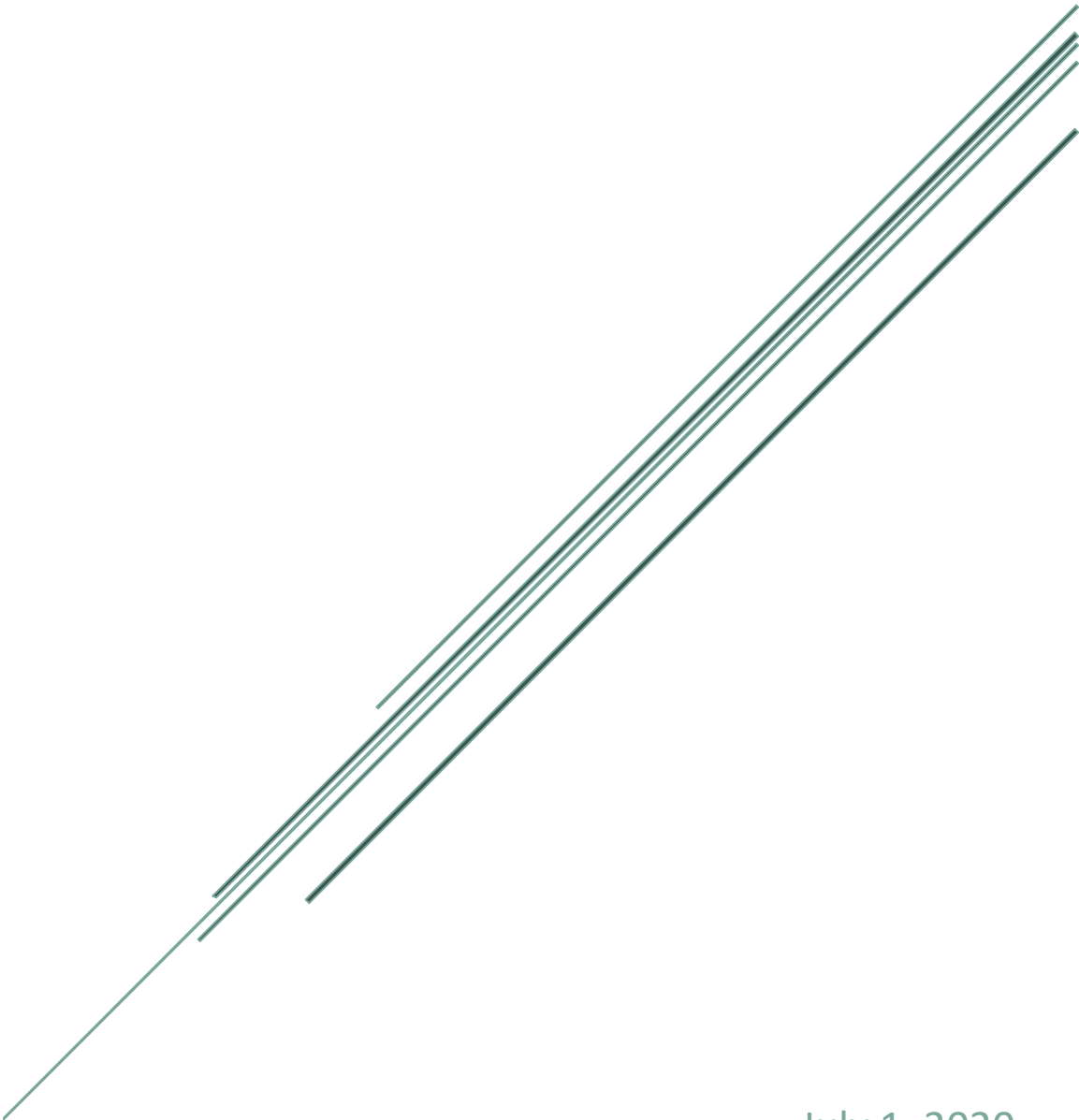


AFFORDABLE HOUSING MIDPOINT REVIEW REPORT

Borough of Demarest



July 1, 2020

PURPOSE

Paragraph 23 of the Borough of Demarest's 2018 Settlement Agreement¹ with Fair Share Housing Center (hereinafter "FSHC") requires that the Borough comply with the statutory midpoint review requirements of the Fair Housing Act and specifically N.J.S.A. 52:27D-313, which states "...the Council shall establish procedures for a realistic opportunity review at the midpoint of the certification period and shall provide for notice to the public..." This Midpoint Review Report has been modeled after the template prepared by FSHC and modified to more closely reflect the conditions in the municipality, the Settlement Agreement with FSHC, and the Settlement Agreements with the Intervenors.

The 2018 Settlement Agreement requires that the midpoint review be posted on the Borough website, with a copy provided to FSHC. The review acts as a status report regarding the Borough's compliance mechanisms and whether or not any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity. This review includes mechanisms addressing the unmet need.

RELEVANT BACKGROUND

Demarest filed its Declaratory Judgment Action on July 8, 2015. The Borough executed a Settlement Agreement with FSHC on January 23, 2018. The 2018 Settlement Agreement with FSHC outlines Demarest's affordable housing obligations:

- A zero-unit Rehabilitation Obligation,
- A 66-unit Prior Round Obligation, and
- A 309-unit Third Round Obligation.

However, the Borough sought and received a Vacant Land Adjustment (hereinafter "VLA") for the Prior and Third Round Obligation. The Prior Round VLA produced a 23-unit Realistic Development Potential (hereinafter "RDP"), which resulted in an Unmet Need of 43 units. The Prior Round Obligation RDP was previously approved by the Superior Court and later accepted by the New Jersey Council on Affordable Housing. The Third Round RDP was calculated by adding the three-unit RDP from the Borough's VLA to the five proposed affordable units. This produced an eight-unit RDP. However, through rental bonuses the Borough is able to satisfy a nine-unit RDP. Therefore, the Borough's Third Round Unmet Need is 300 units. Pursuant to Paragraph 11 of the 2018 Settlement Agreement, the Borough will combine the 43-unit Prior Round Unmet Need and the 300-unit Third Round Unmet Need for a Combined Unmet Need of 343 units.

On April 11, 2018, Judge Toskos entered a Conditional Order of Compliance following the Fairness Hearing held on March 26, 2018. Thereafter, Demarest prepared and adopted the requisite compliance documents, including a Housing Element and Fair Share Plan in March of 2019.

However, in June of 2019, a Notice of Motion for Intervention into the Borough's affordable housing litigation was filed by a second Intervenor, commonly referred to as Sylco, the owner of Block 119, Lots 1.05, 1.06, and 1.07, and Block 120, Lots 1.03 and 1.04. On September 27, 2019, Sylco's Motion was

¹ The Settlement Agreement is dated December 27, 2017, but it was executed by the Borough on January 23, 2018.

granted. Following several mediation sessions between the Borough and Sylco, the Borough Council authorized the execution of a Settlement Agreement with Sylco on February 13, 2020 and subsequently a Settlement Agreement with Sylco was approved by the Planning Board on May 6, 2020. The Settlement Agreement with Sylco permits the development of the property with 24 townhomes and requires five affordable housing units to be provided through a payment in lieu of \$1 million. The Borough adopted a revised Housing Element and Fair Share Plan in May of 2020 to incorporate the Sylco property as a mechanism to address the Borough's Combined Unmet Need.

A final compliance hearing was held on June 18, 2020. The Borough awaits a final judgment of repose and/or compliance Order from Judge Farrington.

CONDITIONS OF COMPLIANCE

As noted above, the Borough of Demarest has not yet had its final compliance hearing. Therefore, no Final Order of Judgment and/or Repose has been entered.

Paragraph 21 of the 2018 Settlement Agreement requires, on the first anniversary of the Final Judgment of Compliance and/or Repose (hereinafter "JOR") any every anniversary thereafter, the Borough to submit monitoring of the trust fund activity. Paragraph 22 concerns housing activity, which has the same timeline. Finally, Paragraph 23b concerns the review of very-low income units, which is due every third anniversary of the JOR. The first anniversary has not yet occurred since the Borough has not had its final compliance hearing.

PRIOR ROUND MECHANISM REVIEW

Demarest was issued a Judgment of Compliance for the Prior Round in June of 2001, which granted a VLA to the Borough for the 66-unit Prior Round Obligation. The Prior Round RDP is 23 units. The Borough has three existing mechanisms and one proposed mechanism to satisfy the Prior Round RDP. A total of 18 credits and 5 bonuses are allocated to the Prior Round RDP. All mechanisms are detailed in the 2020 Housing Element and Fair Share Plan. See the table on the following page for a summary of the mechanisms allocated to the Prior Round RDP.

| PRIOR ROUND REALISTIC DEVELOPMENT POTENTIAL MECHANISMS | | | | | | |
|--|--------------|--|-------------------------|--|---------------------------|---------------------------|
| Development | Block & Lot | Description | Ordinance Adopted (Y/N) | Status | Existing Affordable Units | Proposed Affordable Units |
| RCA to Hoboken | N/A | A nine-unit RCA between the Borough and City of Hoboken, approved by COAH in 2004. The RCA required Demarest to contribute a total of \$225,000. | N/A | Approved by COAH on November 22, 2004 and subsequently transferred. | 9 | |
| Alpine Country Club | B120, L11.31 | 38-unit inclusionary condominium development, which was the subject of a Court Settlement Agreement. The development includes four age-restricted affordable units deed restricted for 30 years. | N/A | Built & Occupied | 4 | |
| Advancing Opportunities, Inc. | B2, L51.02 | Group home for four very-low income clients, which was licensed in 2012. | N/A | Built & Occupied | 4 | |
| 95 County Road | B145, L5 | Proposed inclusionary development with a maximum of eight multi-family units, including two affordable units. | Y | Ordinance #1066-19 was adopted on August 26, 2019, which rezoned the property to the new R-MF Residential Multi-Family District. The R-MF District permits multi-family dwellings at a density of four units per acre, with a maximum of eight units, including two affordable units. The Borough awaits an application. | | 1 |

THIRD ROUND REALISTIC OPPORTUNITY REVIEW

The realistic opportunity standard applies to all RDP mechanisms for VLA municipalities. The table on the following page summarizes the mechanisms allocated to the Third Round RDP and their current status. A total of two proposed mechanisms are allocated to the Third Round RDP, which generate 7 credits and 2 bonuses.

| THIRD ROUND REALISTIC DEVELOPMENT POTENTIAL MECHANISMS | | | | | | |
|--|---------------|--|-------------------------|--|---------------------------|---------------------------|
| Development | Block & Lot | Description | Ordinance Adopted (Y/N) | Status | Existing Affordable Units | Proposed Affordable Units |
| 95 County Road | B145, L5 | Proposed inclusionary development with a maximum of eight multi-family units, including two affordable units. | Y | Ordinance #1066-19 was adopted on August 26, 2019, which rezoned the property to the new R-MF Residential Multi-Family District. The R-MF District permits multi-family dwellings at a density of four units per acre, with a maximum of eight units, including two affordable units. The Borough awaits an application. | | 1 |
| 127 Hardenburgh Avenue | B23, L13 & 14 | Originally, proposed as an inclusionary development. The site will now be 100% affordable with at least 16 affordable units, of which at least 8 will be family affordables. | Y | On November 25, 2019 a Redevelopment Plan was adopted that covers the subject property. The Plan was amended on February 24, 2020. On March 30, 2020, the Mayor and Council designated United Way of Bergen County as the redeveloper of the site. The Redeveloper's Agreement is being drafted. | | 6 |

COMBINED PRIOR ROUND AND THIRD ROUND UNMET NEED

As previously stated, the Borough and FSHC agreed to combine the 43-unit Prior Round Unmet Need and 300-unit Third Round Unmet Need for a total Unmet Need of 343 units. The table on the following page summarizes the mechanisms allocated to the Combined Prior and Third Round Unmet Need and their current status. All mechanisms allocated to the Combined Unmet Need are proposed.

COMBINED PRIOR ROUND AND THIRD ROUND UNMET NEED MECHANISMS

| Development | Block & Lot | Description | Ordinance Adopted (Y/N) | Status | Existing Affordable Units | Proposed Affordable Units |
|-------------------------------|----------------------|---|-------------------------|--|---------------------------|---------------------------|
| 127 Hardenburgh Avenue | B23, L 13 & 14 | Originally, proposed as an inclusionary development. The site will now be 100% affordable with at least 16 affordable units, of which at least 8 will be family affordables. | N | On November 25, 2019 a Redevelopment Plan was adopted that covers the subject property. The Plan was amended on February 24, 2020. On March 30, 2020, the Mayor and Council designated United Way of Bergen County as the redeveloper of the site. The Redeveloper's Agreement is being drafted. | | 10 |
| Accessory Apartment Ordinance | N/A | Pursuant to the Settlement Agreement with FSHC, the Borough will amend the Borough's existing accessory apartment ordinance to expand the areas where accessory apartments are permitted and increase the subsidized payment. | Y | Ordinance #1069-19, adopted on August 26, 2019, repealed and replaced the existing accessory apartment ordinance. The new regulations expand the area where accessory apartments are permitted to include the C and D Districts in addition to the A, BB, and B Districts and increase the subsidized payment from \$10,000 to \$20,000. The Borough will begin advertising the accessory apartment program after the JOR is issued. | | TBD |
| Downtown Rehabilitation Area | Various block & lots | Designated Rehabilitation Area containing 23 tax lots (28 parcels). The redevelopment plan will provide opportunities for inclusionary development at various densities depending on lot size. | Y | The Downtown Redevelopment Plan was adopted on November 25, 2019 via Ordinance #1071-19. Changes were made to the document, which required it to be adopted subsequently on February 24, 2020 via Ordinance No. 1075-20. The Borough awaits applications. | | TBD |

| COMBINED PRIOR ROUND AND THIRD ROUND UNMET NEED MECHANISMS (continued) | | | | | | |
|--|--|--|-------------------------|--|---------------------------|---------------------------|
| Development | Block & Lot | Description | Ordinance Adopted (Y/N) | Status | Existing Affordable Units | Proposed Affordable Units |
| Downtown Rehabilitation Area | Various block & lots | Designated Rehabilitation Area containing 23 tax lots (28 parcels). The redevelopment plan will provide opportunities for inclusionary development at various densities depending on lot size. | Y | The Downtown Redevelopment Plan was adopted on November 25, 2019 via Ordinance #1071-19. Changes were made to the document, which required it to be adopted subsequently on February 24, 2020 via Ordinance No. 1075-20. The Borough awaits applications. | | TBD |
| Sylco | B119, L1.05, 1.06, & 1.07 and B120, L1.03 & 1.40 | Proposed townhome development with a maximum of 24 units. | Y | Ordinance #1080-20 was adopted on May 18, 2020, which established the R-MF-2 Residential Multi-Family 2 Overlay District on the property. The Overlay District permits a maximum of 24 townhouse dwellings on the tract and requires five affordable housing units to be provided by a \$1,000,000 payment in lieu. The Borough awaits an application. | | |
| Borough-Wide Set-Aside | TBD | Inclusionary ordinance triggered when multi-family development of certain sizes and densities are permitted outside of an inclusionary zone. | Y | The Borough awaits an application that triggers the Ordinance. | | TBD |

REHABILITATION

Pursuant to the 2018 Settlement Agreement, Demarest does not have a Rehabilitation Obligation.

VERY-LOW INCOME ANALYSIS

Paragraph 14 of the Settlement Agreement indicates that 13% of all units referenced in the Agreement, except those units that were constructed or approved as of July 1, 2008, shall be very-low income units.

Half of those units must be available for families. The table below provides a summary of the Borough’s very-low income units and their current status.

| VERY-LOW INCOME UNITS | | | | | |
|------------------------------|------------------------|--------------------|--------------------|-------------------------|--|
| Mechanisms | Total Affordable Units | Proposed VLI Units | Existing VLI Units | VLI Percentage of Total | Status |
| 95 County Road | 2 | 0 | | 0.0% | The Borough has rezoned the property to permit inclusionary development. Awaiting applications. |
| 127 Hardenburgh Avenue | 16 | 3 | | 18.8% | The Borough has designated United Way of Bergen County as the redeveloper of the property. A redeveloper's agreement is being drafted. |
| Downtown Rehabilitation Area | TBD | TBD | | TBD | The Amended Downtown Redevelopment Plan was adopted on February 24, 2020 via Ordinance No. 1075-20. Awaiting applications. |
| Borough-Wide Set-Aside | TBD | TBD | | TBD | Ordinance adopted. Awaiting applications. |

CONCLUSION

As per Paragraphs 12 and 13 of the 2018 Settlement Agreement, the Borough was required to provide a realistic opportunity for the development of affordable housing through the adoption of inclusionary zoning:

- 95 County Road (Block 145, Lot 5) implemented by Ordinance #1066-19
- 127 Hardenburgh Avenue implemented by Ordinance #1075-20
- Downtown Rehabilitation Area implemented by Ordinance #1075-20
- Accessory Apartment Ordinance. implemented by Ordinance #1069-19
- Borough-Wide Set-Aside requirement implemented by Ordinance #1068-19

As demonstrated by the tables above, Demarest has adopted the necessary ordinances for the above mechanisms, thereby creating the realistic opportunity that is required by statute. The Borough’s plan implementation continues to create a realistic opportunity where that standard is applicable, and the Borough has implemented its Unmet Need mechanisms, which continue to be constitutionally sufficient.